GOVERNMENT OF MYSORE.

FOOD, CIVIL SUPPLIES AND LABOUR DEPARTMENT (LABOUR).

Labour Dispute.—Industrial Dispute between the Workmen and the Management of M/s. Rajesh Trading Co., 23/4, Ganigarpet, C.R. Temple Street, Avenue Road Cross, Bangalore–2.

Award of the Laborr Court, Bangalore—Published.

Read the following papers :—

(1) Letter No. 841/67-68, dated 26th October 1967, from Shri P. T. Kadkol, Presiding Officer, Labour Court, Bangalore.

BEFORE THE PRESIDING OFFICER, LABOUR COURT, BANGALORE.

Dated this 26th day of October 1967.

Present

Shri P. T. Kadkol, B. Sc., LL.B., ... Presiding Officer.

Reference, No. 141 of 1967.

Sri. K. S. S. Narasimha, No. 149, Mudaliar Street, Nettakallappa Circle, Bangalore-4. ... ... *I Party.*

Vs.

The Mangement of M/s. Rajesh Trading Co., 23/4, Ganigarpet C. R. Temple Street, Avenue Road Cross, Bangalore-2
... ... *II Party.*

Refernce.

G. O. No. LMA 535 LLD 66, dated 30th November 1966.

AWARD

The Government of Mysore being of opinion that an industrial dispute exists between the workmen and the management of M/s. Rajesh Trading Co., Bangalore, have referred it to this court for adjudication under Section 10(1) (c) of the Industrial Disputes Act, 1947 by their Order No. LMA 535 LLD 66 Dated 30th

November 1966, setting out the following points of dispute for adjudication .—

> "Whether the Management of the Rajesh Trading Co., 23/4, Ganigarpet, C. R. Temple St., Avenue Road Cross, Bangalore, are justified in terminating the services of Sri. K. S. S. Narasimha, their workman ; if not to what relief the said workman is entitled ?"

2. The aggrieved workman in this dispute is Sri K.S.S. Narasimha and the dispute relates to the termination of his services by the Management of the Establishment, by name Rajesh Trading Company, Bangalore, arrayed as the Second Party in this proceeding. The cause of Narasimha has not been sponsored by any Trade Union. It is also not know whether the other workmen in the Establishment, if any, have supported his cause.

3. Rajesh Trading Company, Bangalore is a proprietory concern, the proprietor being Aravind Keshavalal Dave. The aggrieved workman Narasimha was appointed as a "Travelling Representatives" for the Rajesh Trading Company, by Aravind Dave. The letter of appointment dated 16th September 1964 is at Ex.W.3. According to this letter, the appointment is with effect from 1st Nauember 1964, and subject to the conditions mentionod therein. Accordfng to Narasimha, however, he joined duty some time in Otober 1964 itself. Then on 25th January 1965, Aravind Dave, through his Advocate, issued the Notice Ex.W. 4 (Ex.M. 1 is its copy) to Narasimha, terminating his services with effect from 1st February 1965. He also issued a Printed Public Notice dated 30th January 1965 declaring that Narsaimha had ceased to be his representative as his services had been terminated with effect from 1st February 1965. The Public Notice is at Ex.M.4. After this, Narasimha sent an application dated 25th February 1965, to the Commissioner of Labour, Bangalore, under the Shops and Commercial Establishments Act (Pages 2 to 4 of Ex.W.2), praying for an enquiry into his termination and award of appropriate reliefs. He also filed an application before the authority under the Payment of Wages Act to recover wages of salary due to him. The Commissioner of Labour issued a circular dated 11th May 1966 saying that proceeding pending before him under the Shops and Establishments Act, challenging orders of termination, might be taken up for conciliation under the Industrial Disputes Act, in view of Section 2A thereof and sent its copy to Narasimha (Ex.W.1). Narasimha agreed for conciliation under the Industrial

Dispute Act. Hence the Labour and Conciliation Officer conducted counciliation proceedings between Narasimha and Arvind Dave. The proceedings ended in a failure. The failure report submitted by him is at Page 1 of Ex.W.2. Thereafter, Government have been pleased to refer the dispute to this Court for adjudication.

4. Narasimha has submitted a lengthy claim statement dated 30th December 1965. Leaving aside unnecessary details for the present, the substance of the claim statement is that he (Narasimha) was a permanent employee under Aravind Dave in the Rajesh Trading Company, Aravind Dave has illegally terminated his services; the termination order be set aside and he be reinstated in his former post with full back wages and continuity of service etc.,

5. Aravind Dave has submitted his statement of objections dated 6th February 1967, raising contentions as under :—

> The present dispute is not an industrial dispute ; Narasimha is not a workman as defined in the Industrial Dispute Act ; the business that he is doing is not an industry as defined in the Act ; hence this Court has no jurisdiction to adjudicate upon this dispute ; it is true that he had employed Narasimha ; it is also true that he has terminated his (Narsimha's) service ; he has terminated it for the reasons set out in the written statement ; hence the Reference be rejected with costs, etc.,

6. Narasimha has submitted a statement dated17th February 1967 claiming Rs. 10,000 from Aravind Dav as detailsd therein. Then on 6th March 1967, he has submitted h.. rejoinder to the written statement of Aravid Dave. Therein he has reiterated the averments made by him in the claim statement.

7. On these pleading, the following issues have been framed and set down for hearing :—

1- Do the activities of the Second Party amout to an industry as defined in Section 2 (j) of the Industrial Disputes Act ?
2. Is the aggrieved workman Narasimha, a workman as defined in Section 2 (s) of the Industrial Disputes Act?
3. Is the referred dispute an industrial dispute
4. If not, can this court adjudicate upon this disput?

5. Are the allegations made against the aggrieved workman proved by the Second Party
6. If so, are they sufficient to justify the termination of the services of the aggrieved workman?
7. Is the Mangement guilty of any victimisation or unfair labour practice
8. To what reliefs is the aggrieved workman entitlede?
9. What Award?

Parties were asked to lead evidence on these issues and they have done so. Narasimha has examined himself as W.W.1 and produced four documents marked Exts.W.1 to W.4 and one document marked 'A' for identification. Aravid Dave has examined himself as M.W.1 and produced eight documents marked Exts.M.1 to M.8. This is all the evidence in the case. I now proceed to consider the issues on the basis of the evidence led before me.

8. The most important issue in this case is whether the present dispute is an industrial dispute. It is a jurisdictional issue. It is only if this issue is found in favour of the aggrieved workman, that, the other issue can be gone into and adjudicated upon. Now a dispute be an industrial dispute if it is sponsored by the Trade Union of the workers of the Establishment in question and of which the aggrieved workman is a member. It would also be an industrial dispute if it is sponsored by a general Trade Union of which a substantial or considerable section of the workers of the workers of the said establishment are members and they resolve to support the cause of the aggreived workman. Thirdly, it would also be and industrial dispute, if a considerable or substantial section of the workmen of the concerned Establishment espouse the cause of the aggrieved workman. That an individual dispute becomes an industrial dispute only in the circumstances hmentioned above, as been enunciated by the Supreme Court and all the High Courts, in various decisions. I do not think it necessary to cite them here.

9. Now eomming to the case on hand, it is evident that the present dispute has not been sponsored by any Trade Union, local or general. Narasimha is also not a member of any Trade Union. Hence the present dispute, which is essentially individual at the inception, cannot be treated as having developed itself into an industrial dispute on the ground of its having been espoused by any union of workers. The next

question is, whether it was become an industrial dispute by its having been supported by a substantial or consideration section of co-workers of the same establishment. On this point, Narasimha has stated :—

> " There are two other persons working there (which in the context means, the Rajesh Trading Company), they being one Sweeper and one person sitting at the counter. I do not know the names of those two persons. I do not know if these two persons are still in the service of the second party. These two persons have not supported by cause. I again say that I have not asked them if they support my cause. These two persons stay in the house of Mr. Dave himself. If I examine them, they may depose against me, because they are living with Mr. Dave (*Vide* para 3 ".

The above statement has been made by Narasimha in his examination in chief itself. This means that Narasimha has no evidence to show that the only two other workers in tho Establishment support his cause. Then we find that in the Court of the Authority under the Payment of Wages Act, where Narasimha is proceeding against Aravind Dáve, he has stated :—

" I am the only employee of the Respondent ". So we find that if Narasimha is the only employee in the second party establishment, the present dispute cannot be an industrial dispute as ruled by our High Court in P. M. Murugappa Mudaliar Rathina Mudaliar and Sons—*Vs* Ruju Mudaliar (P) and Others reported in 1965 I LLJ 489. Since the other two workers in the establishment (if they be there) have not espoused the cause of Narasimha, the present dispute cannot be an industrial dispute. If he is the only employee in the Establishment, then too the present dispute cannot be treated as an Industrial Dispute. This would be the position in law.

10. The next question would be whether the present dispute can be considered to be an industrial dispute in view of Section 2A of the Industrial Disputes Act. Section 2A was put on the statute by the Industrial Disputes (Amendment) Act of 1965. This amending Act received the assoent of the President of the Union of India on 19th November 1965. Section 1 (2) of the Amending Act lays down that it would come into force on such date as the Central Government may, by Notification in the official Gazette, appoint. The Central Government published the Notification No.

S. O. 3751 dated 27th November 1965 under Section 1 (2) of the Amending Act. The Notification runs as under :—

> "In exercise of the powers conferred by sub-section (2) of Section 1 of the Industrial Disputes (Amendment) Act, 1965, (35 of 1965), the Central Government hereby appoints the 1st day of December 1965, as the date on which the said Act shall come into force."

This means that Section 2A came into force with effect from 1st December 1965. It runs as under :—

> "Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with or arising out of such discharge, dismissal or retrenchment or termination shall be deemed to be an industrial dispute net withstanding that no other workman nor any union of workmen is a party to the dispute"

11. Mr. Narasimha urges that the present dispute shall have to be deemed to be an industrial dispute under Section 2A of the Act. But it should be noted here that Narasimha's service has been terminated with effect from 1st February 1965, whereas Section 2A has come into force an 1st December 1965. So, it follows that, Narasimha can notget the benefit of Section 2A, unless we find that Section 2A is retrospective in effect. According to the general principles of law, all legislations are prespective in effect and operation, unless they are made retrospective specifically are by necessary implication. To find out if the legislation has a retrospective effect, we shall have to examine the language employed by the legislature. The language employed is "when any employer discharges etc.," the dispute "shall be deemed to be an industrial dispute". All these words indicate that the provision is only prospective and not retrospective. If it were the intention of the legislature to make the provision retrospective in effect and operation, it could have said that " when any amployer discharges or has discharged an individual employee " or words to that effect It could have also said "shall be deemed and/or shall be always deemed to have been an industrial dispute " or used words conveing such a meaning. But such words or pharses have not been employed in Section 2A of the Act. Morevoer, Section 1 (2) of the Amending Act says that the amended provision should come into effect on such future date as the Central Government. appoints, Even this

provision indicates that Section 2A was always intended to be prospective—and prospective from the date that the Central Government would appoint at a future date. Hence I am of the view that Section 2A would be appliciable only to cases of discharge, dismissal, retrenchment, termination etc., that take place only on and after 1st December 1965 and would not cover such cases that have taken place prior to that date. It may also be noted that Section 2A of the Act bestows a substantial right to an individual workman, if he is dischared, etc,, to have the dispute adjudicated under the Industrial Dispute Act. This is not merely procedural law. It does not give merely a choice of forum, The rights conferred on a workman under the Industrial Disputes Act, are very much higher than those we gets under the common law of the land. Considering, therefore, all these facts and circumstances, and particularly the language employed by the legislature in Section 2A of the Act, I am of the view that the said section is not at all retrospective but only prospective in effect and operation. Narasimha having been discharged, dismissed, or terminated before 1st December 1965, he can not seek the aid of Section 2A of the Act to say that the present dispute is an industrial dispute.

12. Another question may also have to be considered in this connection. , The present order of Reference has been made by the Government on 30th November 1966. Admittedly Section 2A has come into force on 1st December 1965. Can this dispute be deemed to be an industrial dispute in view of the fact that Section 2A was in force on the date on which the order of Reference was made? The answer to this question also shall have to be in the negative. After all, an order of Reference, shall have to be made by Government on the cause of action accrued to the concerned workman. It shall have to have a direct bearing on the cause of action. If the cause of action has accrued to a workman before the appointes date, that is 1st December 1965, and the legislature has not made Section 2A retrospective in effect and operation, the Government can not give him the right envisaged by this section, by making the Reference under Section 10, on a date subsequent to the appointed date. By making the Reference on a subsequent date, the Government cannot give the workman a right, which Section 2A itself has not given him with respect to a cause of action accrued before 1st December 1965. To so construe the provision would mean, that Government would have powers higher than that of the Legislature. The Government can refer only an

industrial dispute for adjudication under Section 10 of the Act. A duty is cast on the industrial court to examine the question whether the referred dispute is an industrial dispute, whatever be the date of Reference. If the industrial court finds that what is referred to it for adjudication is not an industrial dispute, it can not get jurisdiction to adjudicate upon it. In my opinion, therefore the date of Reference by Government, would not at all be material for the decision of the question whether the dispute referred for adjudication is or is not an industrial dispute.

13 In view of these conclusions reached by me, I hold that the present dispute is not an industrial dispute and hence this court has no jursdication to adjudicate upon it and record my findings on the third and the fourth issues accordingly.

14. In view of my findings on the third and forth issues, I cannot go into or adjudicate upon any of the remaining issues formulated above. The reference requires to be rejected on the ground that the referred dispute is not an industrial dispute.

15 **Hence I proceed to make an Award as under :**

AWARD

This Reference is rejected on the ground that the dispute referred for adjudication is not an industrial dispute and hence this court has no Jurisdiction to adjudicate upon it. I make no order as to costs.

P. T. KADKOL,
Presiding Officer,
Labour Court, Bangalore.

'COPY'

P. T. KADKOL,
Presiding Officer,
Labour Court, Bangalore.

ORDER

Bangalore dated 6th Novemebr 1967.

S. O. 2163.—WHEREAS by State Government Order No. LMA 535 LLD 66, dated 30th November 1966 the Industrial Dispute between the Workmen and the Management of M/s. Rajesh Trading Co., 33/4, Ganigarpet, C. R. Temple Road, Avenue Road Cross, Bangalore-2, was referred to the Labour Court, Bangalore for adjudication.

AND WHEREAS the Labour Court, has submitted to the State Government its award in respect of the said Industrial Dispute;

NOW, THEREFORE, in exercise of the powers conferred by Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Government of Mysore are pealsed to direct the publication of the said award as above in the *Mysore Gazette*.

[No. LMA 535 LLD 66.]

By Order and in the name of the Governor of Mysore,

1481 G. G. PUROHIT, *Under Secy.*